



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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HEDGEYE RISK MANAGEMENT, LLC,

Plaintiff,

- against -

DARIUS DALE, et al.

Defendants.
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21-CV-3687 (ALC) (RWL)

ORDER

ROBERT W. LEHRBURGER, United States Magistrate Judge.

This order addresses Defendants' letter motion at Dkt. 637 to strike and for sanctions concerning two sets of allegations appearing in Plaintiff's Fourth Amended Complaint. The motion is denied without prejudice. Defendants first challenge allegations appearing in paragraphs 56-58, which allege trade secret protection in the totality of the notebooks kept by Mr. McCullough. The Court does not read those allegations to be inconsistent with what the Court previously has ruled. If the parties have a disagreement about the scope of what is claimed, that will need to be addressed on a motion in limine or other motion before Judge Carter. The motion is denied with respect to those allegations. The second set of allegations challenged by Defendants (paragraph 150 of the amended pleading) concern alleged breach of the Assignment of Rights provision. In his decision on the motion to dismiss (see Dkt. 623), Judge Carter dismissed Plaintiff's claim under the Assignment of Rights provision for failure to include any factual allegations of breach of that provision and granted Plaintiff leave to amend. Defendants nevertheless fault Plaintiff for not previously identifying the alleged breach of that provision in interrogatory answers during discovery. Whether the allegations concerning

the Assignment of Rights provision should be struck on that basis will be for Judge Carter to decide absent referral.

The Clerk of Court is respectfully directed to terminate the letter motion at Dkt. 637.

SO ORDERED.

A handwritten signature in black ink, appearing to read 'R. Lehrburger', with a long horizontal stroke extending to the right.

ROBERT W. LEHRBURGER
UNITED STATES MAGISTRATE JUDGE

Dated: November 27, 2023
New York, New York

Copies transmitted this date to all counsel of record.